

9/27/12

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DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT
RAVALLI COUNTY

STATE OF MONTANA,)	Cause No.: DC-11-117
)	
Plaintiff,)	
)	
vs.)	STATE'S MOTION IN LIMINE TO
)	EXCLUDE TESTIMONY OF ALAN
HARRIS HIMES,)	LUDWIG AND BRIEF IN SUPPORT
)	
Defendant.)	

The State of Montana, by and through counsel, hereby moves the Court to preclude the Defendant from calling Alan Ludwig to testify at trial regarding the substantive elements of this case.

FACTS

The Defendant deposed Alan Ludwig, a former investigator at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI). Mr. Ludwig retired from the CSI in June 2012. Depo. Alan Ludwig, 49:10 (Jul. 31, 2012). During his deposition, Mr. Ludwig admitted he has limited personal knowledge about the State's case against the Defendant:

1 Q. Does the name Harris Himes ring a bell at all?
2 A. You mentioned Harris Himes to me when you called me.
3 Q. And tell me if you – tell me when you first heard the name Harris Himes, the first
4 time.
5 A. The first time I can actively recall the name Harris Himes is you calling me.
6 When you spoke to me and encouraged me to do an Affidavit regarding the
7 matter, I could not connect on who Harris Himes was.

8 And so I Googled you. I Googled Harris Himes. And when I read stuff I
9 saw on Google, there's a connection with Harris Himes to a case that I probably
10 took a call on over two years ago from a man in Hamilton who said he'd been left
11 in Mexico.

12 And the only thing I remember about that call was the man couldn't give
13 me enough information for me to determine whether or not it was a security,
14 because it sounded like when he was talking to me it was a business venture. He
15 had gone down there and look at a piece of equipment in some industrial building
16 or something with someone and had been left there.

17 And though I encouraged that person to – to send something to me, he
18 never did. When I read the information, the – the news that's on Google, it
19 appears that Himes is connected with another man name Bryant who's involved in
20 solicitations of funds that went into Bryant's account.

21 **I don't remember Himes' name from that incident two years ago and**
22 **I never worked on that matter**, but I do remember that Lynne was starting to
23 work on that when I left, because I remember talking to her about it. And I said,
24 This is the guy that got dumped down in Mexico, and she said yes. And I was
25 wondering why after so long a time we were on it, because the guy had – as I
know – unless Lynne received something from him – after I tried to contact him
to send information, I didn't – I didn't know it was still relevant.

Depo. Ludwig, 109:4-110:21 (Emphasis Added).

Q. Okay. I want to backtrack a little bit to the conversation you had with Ms. Egan
with regard to the gentleman complaining about being left in Mexico. What was
the next contact or event regarding that case that you heard about or knew about?

A. Are – are we speaking from the time when I received the call years ago or from
when Lynne Egan brought it up in her office?

Q. From when Lynne Egan brought it up in her office.

A. **I – I really don't know anything of that case after that point.** Again, I was
really being excluded from a lot of goings on in the office.

Q. **Did anyone else besides Ms. Egan talk about the case involving the caller who**
was stranded in Mexico?

A. **No. Not to me.**

Q. **Did anyone else?**

A. **No.**

Depo. Ludwig, 128:13-129:5 (Emphasis Added).

1 Q. What did Mr. Monforton say to you when he called you about this case?
2 A. **He asked me – he asked me what I knew about Har – Harris Himes. And I**
3 **said, Nothing.**

4 Depo. Ludwig, 195:23-196:1 (Emphasis Added).

5 Q. Do I understand your testimony to be that Mr. Himes is innocent?
6 A. Oh, I – I said in specifically I don't know Mr. Himes. And the – it – it tends to be
7 that people who wind up being involved in these matters are complicit in some
8 matter and some of those charges are relevant I'm sure.
9 I'm not sure of that but I have to take the fact that filing means that there's some –
10 some strength to it or you wouldn't do it, but –
11 Q. And are you –
12 A. -- and I – I wouldn't – **I don't know the case. I don't know the internals of the**
13 **case at all.** Just from the documents available on Google.

14 Depo. Ludwig, 202:7-21 (Emphasis Added).

15 The sum of Mr. Ludwig's knowledge regarding the present case is that he initially
16 received a call from G.S., who was encouraged to submit documents. At some point later,
17 Mr. Ludwig had a conversation with Lynne Egan, who investigated the case. By his own
18 admissions, he does not know anything more about the substantive elements of the case.

19 ARGUMENT

20 The purpose of a motion in limine is to "prevent the introduction of evidence which is
21 irrelevant, immaterial, or unfairly prejudicial." *Hulse v. Mont. Dept. of Justice*, 1998 MT 108, ¶
22 15, 289 Mont. 1, 961, P.2d 75. In Montana, "[t]he authority to grant or deny a motion in limine
23 rests in the inherent power of the court to admit or exclude evidence and to take such precautions
24 as are necessary to afford a fair trial for all parties." *State v. Vandersloot*, 2003 MT 179, ¶ 8, 316
25 Mont. 405, 73 P.3d 174.

1 **I. THE COURT SHOULD EXCLUDE MR. LUDWIG FROM TESTIFYING**
2 **BECAUSE HE HAS LIMITED PERSONAL KNOWLEDGE OF THIS CASE AS**
3 **REQUIRED BY MONT. R. EVID 602.**

4 Mr. Ludwig did not work on this case. He admitted he does not know anything
5 substantive about the charges against the Defendant. As a result, Mr. Ludwig lacks personal
6 knowledge and his testimony is entirely irrelevant.

7 The fundamental rule is that a lay witness must have personal knowledge in order to
8 testify:

9 **Rule 602. Lack of personal knowledge.**

10 A witness may not testify as to a matter unless evidence is introduced sufficient to
11 support a finding that the witness has personal knowledge of the matter. Evidence to
12 prove personal knowledge may, but need not, consist of the witness' own testimony.
13 This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert
14 witnesses.

15 The Defendant has not specifically identified Mr. Ludwig as an expert witness. Def.'s
16 Preliminary Witness List (Jul. 30, 2012). Thus, Mr. Ludwig's proposed testimony is limited to
17 his conversation with G.S., which is inadmissible hearsay under Rules 801 and 802 of the
18 Montana Rules of Evidence, and his conversation with Lynne Egan, who actually investigated
19 this case. A lay witness with no personal knowledge is strictly prohibited from testifying under
20 Rule 602 and the Court should preclude this testimony because it lacks proper foundation and is
21 irrelevant to the issues presented.

22 For the foregoing reasons, the State respectfully requests that the Court grant the State's
23 motion in limine to exclude the testimony of Alan Ludwig.

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1 DATED this 26th day of September, 2012.

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4 By: 

JESSE LASLOVICH

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day of September, 2012, by US mail, first-class postage paid, to the following:

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